

In The Matter Of:

**THE SCO GROUP, INC., v.
INTERNATIONAL BUSINESS MACHINES CORPORATION**

CHRISTOPHER SONTAG

December 21, 2005

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<p style="text-align: right;">Page 13</p> <p>1 THE WITNESS: Other than emails that may 2 have been made in conjunction with our legal counsel 3 that would therefore be privileged, I'm not sure that 4 there would be any other emails that would have been 5 sent or received by Mr. McBride that would have been 6 responsive to Topic 7.</p> <p>7 Q. BY MR. DRAKE: How about emails that you 8 yourself might have sent or received that would be 9 responsive to Topic 7?</p> <p>10 A. I don't believe I would have sent or had 11 received any emails responsive to Topic 7 that would 12 have not been subject to privilege, having been 13 communications with -- in conjunction with our legal 14 counsel.</p> <p>15 Q. Okay. Is it your testimony then that you 16 don't recall sending any emails to any of the 17 recipients of the letters that we'll talk about in a 18 moment that you -- these so-called intent to sue or 19 license letters?</p> <p>20 MR. NORMAND: Objection to form.</p> <p>21 THE WITNESS: We may very well have had 22 email communications with companies that were 23 recipients of the, you know, the -- what we call the 24 Global 1500 letter and also the Unix licensee letter. 25 However, in no case would any of those</p>	<p style="text-align: right;">Page 15</p> <p>1 your belief then that Exhibit 92 is a comprehensive 2 list with respect to documents that SCO contends are 3 responsive to Topic 7; is that correct?</p> <p>4 MR. NORMAND: Objection to form.</p> <p>5 THE WITNESS: Yes, inasmuch as -- I mean, 6 it was a fairly extensive effort to attempt to 7 identify all of these documents.</p> <p>8 MR. DRAKE: Yes, and that's just what I'm 9 trying to explore and establish with you, so I 10 appreciate your answer. (Exhibit 315 was marked for identification.)</p> <p>11 Q. BY MR. DRAKE: I'd like to show you what 12 we'll mark as Exhibit 315 and ask you to identify 13 that, please.</p> <p>14 A. This was a spreadsheet prepared regarding 15 Topic 7 that contains a list of companies who received 16 our, what we call Fortune -- or Global 1500 letter as 17 well as a letter we sent to our Unix licensees. (Exhibit 314 was marked for identification.)</p> <p>18 Q. BY MR. DRAKE: Before discussing 19 Exhibit 315 in more detail let me show you what we've 20 marked as Exhibit 314 to your deposition and ask you 21 to identify that if you can, please.</p> <p>22 A. This appears to be an email from myself 23 to Joanie Bingham and Kathy Martens back in</p>
<p style="text-align: right;">Page 14</p> <p>1 correspondence have really been around our intent to 2 sue any of those companies.</p> <p>3 Q. BY MR. DRAKE: What about correspondence? 4 Do you recall sending any correspondence to any of the 5 recipients of the Global 1500 letter or the UnixWare 6 license letter?</p> <p>7 MR. NORMAND: Objection to form. Last 8 question had the same issue, are we talking -- when 9 you're saying "you" at this point do you mean 10 Mr. Sontag?</p> <p>11 MR. DRAKE: I mean him personally at this 12 point and them I'm going to expand it to your 13 knowledge of anyone on behalf of SCO.</p> <p>14 Q. So my question was in your individual 15 capacity do you recall sending any correspondence to 16 any of the recipients of either the Global 1500 letter 17 or the UnixWare license letter?</p> <p>18 A. No.</p> <p>19 Q. And again, to your knowledge did anyone 20 on behalf of SCO send correspondence to those 21 recipients?</p> <p>22 A. Other than the letters themselves?</p> <p>23 Q. Yes, sir.</p> <p>24 A. I do not believe so.</p> <p>25 Q. So back to your original answer, it is</p>	<p style="text-align: right;">Page 16</p> <p>1 December 22nd of 2003.</p> <p>2 Q. And can you identify the attachment to 3 that email that is part of Exhibit 314?</p> <p>4 A. It appears to be a listing of customers 5 that would be on the Global 1500 list.</p> <p>6 Q. What was the purpose of compiling the 7 list of the so-called Global 1500 companies?</p> <p>8 MR. NORMAND: Objection to form. Scope. 9 And object to the extent that the answer would reveal 10 any attorney-client communications or any attorney 11 work product.</p> <p>12 THE WITNESS: Certainly we wanted to have 13 a database to be able to record any follow up 14 responses from any of those companies. And if we made 15 any follow on communications with those companies we'd 16 have a location to be able to record that 17 communication.</p> <p>18 Q. BY MR. DRAKE: What was the purpose of 19 compiling the list in the first place?</p> <p>20 MR. NORMAND: Objection to form. Asked 21 and answered.</p> <p>22 Q. BY MR. DRAKE: I mean, apart from having 23 a place to record information, what was the purpose of 24 identifying these companies?</p> <p>25 MR. NORMAND: Objection to form and</p>

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<p style="text-align: right;">Page 17</p> <p>1 objection to the extent that it calls for 2 attorney-client privilege or attorney work product. 3 THE WITNESS: I really can't comment on 4 the reason why we -- we had prepared a list of large 5 companies that we felt it was important to send a 6 letter stating our, you know, understanding and -- and 7 wanted to make them aware of our concerns. 8 And so creating the Global 1500 list was 9 our mechanism to be able to put together a listing 10 that we could mail to what we felt were the largest 11 potential commercial users of -- of Linux who would 12 most likely have the greatest concern about issues 13 related to Linux and our possible intellectual 14 property issues. 15 Q. When did SCO first decide to compile a 16 list of potential recipients of what came to be known 17 as the Global 1500 letter? 18 MR. NORMAND: Objection to form. 19 THE WITNESS: My best estimate of that 20 would be less than a month before we actually sent out 21 the Global 1500 letter. 22 Q. BY MR. DRAKE: And who was involved, 23 apart from counsel, in putting together the list of 24 recipients for the Global 1500 letter? 25 A. I don't think there was any real magic to</p>	<p style="text-align: right;">Page 19</p> <p>1 MR. NORMAND: Objection to form. 2 THE WITNESS: Yes, I believe there was 3 some attempt made to identify users of Linux. 4 Q. BY MR. DRAKE: And what was done in that 5 regard? 6 A. I believe we had a number of our 7 salespeople take a look at public, you know, press 8 clippings or otherwise and help identify any public 9 press announcements or other types of statements from 10 any of these companies regarding their use of Linux, 11 and some of that was added to the information 12 regarding these companies. 13 MR. NORMAND: And I just want to object 14 to the scope of these line of questions. The topic, 15 as poorly drafted as it is, still relates only to 16 communications between SCO and any other person. IBM 17 defines SCO as including its employees, so I don't 18 think the topic covers communications within SCO 19 regarding these letters, but of course I'll let the 20 witness answer. 21 Q. BY MR. DRAKE: What was the date that the 22 Global 1500 letter was sent out? 23 A. Off the top of my head I don't remember. 24 I believe it was -- I think the date would be on here. 25 I believe it was December 23rd, 2003.</p>
<p style="text-align: right;">Page 18</p> <p>1 the creation of the list. It was my understanding a, 2 you know, Fortune 1000 list of company names that were 3 easily obtained as well as a list of global companies 4 as well that were merged together which ultimately, 5 with some duplication, created a list of about 1500 6 largest companies worldwide. 7 Q. And is that list in fact what ended up 8 being Exhibit 314? 9 MR. NORMAND: Objection to form. 10 THE WITNESS: Based on just a cursory -- 11 cursory view of it it appears to be so. 12 Q. BY MR. DRAKE: All right. And if I 13 understood your earlier answer, part of the intent was 14 to identify those companies who might be using Linux 15 in some significant manner; is that correct, or to 16 some significant extent, I should say? 17 MR. NORMAND: Objection to form. 18 THE WITNESS: I think our simple intent 19 was to make as many large commercial entities aware 20 that we felt there were issues related to intellectual 21 property in Linux and just to make them aware. 22 Q. BY MR. DRAKE: Was there any attempt on 23 SCO's part to determine whether any of the companies 24 listed on Exhibit 314 were actually using Linux at the 25 time?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Refer back to Exhibit 315, if you would, 2 please. And if I may let me just take a quick look at 3 it. 4 MR. NORMAND: Mr. Drake, do you want a 5 copy of that? 6 MR. DRAKE: I would love a copy. Thank 7 you. 8 Q. Mr. Sontag, under Exhibit 315 in the 9 column "Company Name," is this intended to list the 10 name of each company that received the Global 1500 11 letter? 12 A. Yes, I believe so. 13 Q. And did all of the companies listed on 14 Exhibit 315 receive the same letter? 15 A. Yes, I believe so. 16 Q. And the two columns in the far right-hand 17 side of Exhibit 315 are labeled "Response 1" and 18 "Response 2" respectively. What is the column that's 19 labeled "Response 1" intended to signify? 20 A. I believe it was intended to be a 21 repository for any initial response we received from 22 that particular company. 23 Q. Okay. Would you turn to Page 3 of 24 Exhibit 315. In the column for "Advanced Integrated 25 Technologies, Inc.," in the column labeled</p>

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<p style="text-align: right;">Page 149</p> <p>1 I'm not sure if you guys are on the same page as to 2 how that was answered. 3 If you want to read the question again 4 and think about your answer. 5 MR. DRAKE: Go ahead and read it back. 6 (The requested testimony was read back.) 7 THE WITNESS: I'll just add that I 8 believe we were -- my discussion with Mr. Campbell was 9 simply making him aware that we were going to be 10 announcing publicly a SCOsouce program in the next 11 month, January of 2003. 12 We did not have any licensing program in 13 place at that time, so therefore it would have been 14 very difficult to discuss and negotiate that. 15 Q. BY MR. DRAKE: Did SCO ever have 16 discussions with Hewlett-Packard about HP's obtaining 17 the SCOsouce or intellectual property license? 18 A. Yes. 19 Q. When did those discussions begin? 20 A. Beginning of June of 2003. 21 Q. Do you know why Mr. McBride placed a call 22 to Carlton Fiorino on May 12th, 2003, as he had done 23 the same day to Mr. McNealy at Sun? 24 A. The exact nature of that conversation, 25 since I was not involved in that call, but Mr. McBride</p>	<p style="text-align: right;">Page 151</p> <p>1 enter into the license. 2 I believe the reason we didn't enter into 3 the license was because SCO determined it was not in 4 our business interest to make a -- enter into a 5 license with Hewlett-Packard. 6 Q. So is it your testimony that 7 Hewlett-Packard was ready, willing, and able to enter 8 into an agreement, and SCO said no? 9 MR. NORMAND: Objection. Form. 10 A. Yes. 11 Q. BY MR. DRAKE: And the reason SCO 12 declined to enter into the agreement was what, again? 13 MR. NORMAND: You can answer to the 14 extent that it was business reasons. 15 A. Ultimately it was financial amount, but 16 most of the reason why was due to legal concerns for 17 which I can't provide any more answer. 18 Q. BY MR. DRAKE: You said business reasons, 19 Mr. Sontag, that's not legal. What were the business 20 reasons that SCO declined to enter into an agreement 21 with Hewlett-Packard? 22 A. A financial amount we didn't deem to be 23 sufficient for the type of license Hewlett-Packard 24 sought. 25 Q. What are we talking about? What are the</p>
<p style="text-align: right;">Page 150</p> <p>1 occasionally picks up the phone and calls other CEOs 2 of public companies and other large commercial 3 organizations with the desire of making them aware of 4 things, talking to them about possible business 5 together, which I think likely was the nature of that 6 communication. 7 Q. And you don't think it had anything to do 8 with the Global 1500 license, is that correct? 9 A. I do not believe so, not specifically. 10 Q. Did Hewlett-Packard ever obtain a 11 SCOsouce, or intellectual property license from SCO? 12 A. No. 13 Q. Why not, if you know? 14 A. We had negotiations regarding a SCOsouce 15 license for use by Hewlett-Packard for their 16 customers, and we were unable to come to terms. 17 Q. Did Hewlett-Packard ever express to SCO 18 why it chose not to obtain the license, or why they 19 wouldn't agree to your terms? 20 A. No. 21 Q. So you don't know if their reason was 22 money, principle, language of an agreement, or 23 anything of the above? 24 A. Well, you're making the assumption that 25 it was Hewlett-Packard that made the decision not to</p>	<p style="text-align: right;">Page 152</p> <p>1 numbers? 2 A. It was on the order of -- 30 to 50 3 million dollars was going to be the size of the 4 license. We didn't believe that was enough. 5 Q. Was that the price you demanded or was 6 that the price that Hewlett-Packard offered to pay? 7 MR. NORMAND: Objection to form. 8 A. That was the price they offered. 9 Q. BY MR. DRAKE: What price would SCO have 10 accepted? 11 MR. NORMAND: Objection, form. Objection 12 to the extent it calls for speculation. Objection to 13 scope. 14 THE WITNESS: Are you through? 15 MR. DRAKE: Come on. 16 THE WITNESS: I don't have anything more 17 I can add. 18 Q. BY MR. DRAKE: Well, did SCO have a 19 number in mind or not? You said the deal fell apart 20 because you couldn't reach an agreement. 21 MR. NORMAND: Objection to form. 22 A. I don't think we had a specific number in 23 mind. 24 Q. BY MR. DRAKE: Is there any documentation 25 that exists of the negotiations between SCO and</p>

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1 Reporter's Certificate

2 State of Utah)

3 County of Salt Lake)

4

5 I, Ariel Mumma, Certified Shorthand
6 Reporter, Registered Professional Reporter, and Notary

7 Public for the State of Utah, do hereby certify:

8 THAT the foregoing proceedings were taken
9 before me at the time and place set forth herein; that
10 the witness was duly sworn to tell the truth, the
11 whole truth, and nothing but the truth; and that the
12 proceedings were taken down by me in shorthand and
13 thereafter transcribed into typewriting under my
14 direction and supervision;

15 THAT the foregoing pages contain a true
16 and correct transcription of my said shorthand notes
17 so taken.

18 IN WITNESS WHEREOF, I have subscribed my
19 name and affixed my seal this _____ day of
20 _____, 2005.

21 Notary Public

22

23 My commission expires
24 November 15, 2009.

25

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